

JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE
CRITERIA FOR EVALUATING BOARDS
AND THE NEED FOR LICENSURE*

PART 1.

**EVALUATION OF BOARD'S OPERATIONS
AND PROGRAMS**

**A. General Responsibilities, Duties and Composition of
the Board**

ISSUE A1: *Does the composition of the board adequately represent the public's perspective on issues concerning the regulation of...?*

ISSUE A2: *Are the duties and powers of the board defined and has the board exceeded their legal authority at any time?*

ISSUE A3: *Does the board have a policy or specific provisions relating to conflicts of interest and written standards of conduct for board members. Do these include grounds for removal of a board member?*

ISSUE A4: *Has the board adopted rules and standards of professional conduct for licensees? How are these rules communicated to licensees and enforced?*

** The criteria used to evaluate boards was developed by the JLSRC. The criteria used to evaluate the need for licensure is a compilation of questions contained in the "Sunrise Questionnaire" used by the Legislature and the Department of Consumer Affairs when reviewing a new occupational group to be regulated, and from a document published by The Council on Licensure, Enforcement and Regulation (CLEAR) titled, "Questions a Legislator Should Ask" when performing sunrise or sunset review.*

ISSUE A5: *Has the board specified its vision, mission and goals and objectives for its agency?*

ISSUE A6: *Has the board been involved in strategic planning, any type of basic self-assessment, quality management practices, or reorganization to improve the board's overall effectiveness and efficiency?*

ISSUE A7: *Has the board adopted adequate internal policies, procedures, and guidelines and is the board adhering to them?*

ISSUE A8: *Does the board make use of committees, and if so, do they have appropriate authority?*

ISSUE A9: *Do appropriate discussions and decisions occur at regular board meetings? Is public participation encouraged and how often and for what reasons are executive sessions held?*

ISSUE A10: *Has the board formulated and adopted policies and guidelines for "reasonable accommodations" for licensees and licensee establishments?*

ISSUE A11: *What outreach and consumer education is provided by the board to consumers?*

B. Funding and Organization of the Board and Staff

ISSUE B1: *How much has the board spent on program components – licensing, examination, enforcement, other – over the past four years? Are their substantial resources being allocated to other programs that provide no basis for discipline?*

ISSUE B2: *What are the boards' projected expenditures for the next two fiscal years for these program components and is a request for fee increases anticipated? Will the board accumulate excessive reserves? Is a fee reduction appropriate?*

ISSUE B3: *Are there any plans for adopting performance-based budgeting, or any other form of baseline performance measures covering the board's operations?*

ISSUE B4: *What is the organizational breakdown of the board and staff and does it provide the most efficient expenditure of funds?*

ISSUE B5: *Are the responsibilities of the executive officer commensurate with the position?*

C. Licensing and Application Process

ISSUE C1: *Are the education, examination and experience requirements excessive when compared with other states and are they necessary to assure that practitioners are competent?*

ISSUE C2: *If qualifying experience is required, must it be gained under the supervision of a current licensee? If so, does the board provide oversight and is this requirement justified?*

ISSUE C3: *Does the information received on the application and the application review process assure that both in-state and out-of-state applicants are qualified to practice in California?*

ISSUE C4: *How often have licensees been denied licensure and for what reasons?*

ISSUE C5: *Does the renewal of license process provide assurance that practitioners have maintained their competence either through continuing education, periodic examination, peer review or some other procedures? Or is renewal based solely on the payment of a fee?*

ISSUE C6: *Does the board provide an opportunity for reinstatement of the licensee if the license has expired, or for an inactive or retired license status?*

ISSUE C7: *Are there any undue delays in approving the application, providing the exam, or in issuing the license?*

ISSUE C8: *Does the consumer have access to application and licensing information?*

D. Continuing Education and Review of Professional Competence

ISSUE D1: *Does the board have a continuing education requirement? If not, should one be mandated?*

ISSUE D2: *Is the continuing education requirement for renewal of the license necessary and is there evidence that completion of continuing education will improve competence?*

ISSUE D3: *Does the board have a process for approval of continuing education courses that assures appropriate coursework is provided?*

ISSUE D4: *Is there any other type of review conducted by the board to assure competency of the licensee? (Such as peer review, quality reviews of licensees' work product or performance record, or re-testing.) Should the board use other methods to determine and improve professional competence?*

ISSUE D5: *What remedial action does the board take if the licensee is found to be lacking in professional competence?*

E. Examination Process

ISSUE E1: *Does the examination test skills, knowledge and abilities related to the practice of the profession or is it being used as a way to bar entry into the profession? Is their legitimate justification for all examinations? Are the passage rates for particular examinations extremely low, or too high?*

ISSUE E2: *Is the licensing exam properly validated?*

ISSUE E3: *Is the exam given often enough and at convenient sites?*

ISSUE E4: *Is the grading of the exam unbiased?*

ISSUE E5: *If candidates fail the exam, do they have a fair opportunity to retake the examination?*

F. Complaint Process

ISSUE F1: *How many complaints have been filed or dismissed over the past four years and how many have been handled formally or informally? Any backlog of complaints filed?*

ISSUE F2: *Are complaints handled in both an expeditious and appropriate manner, either through informal or formal processes? Any reduction in the time of handling complaints, or have time frames increased? Are complaints prioritized? How accurate are the initial and subsequent decisions on complaints?*

ISSUE F3: *Are there clear written policies and procedures for handling of “intake” calls (“initial inquiries”), and the handling of complaints? Is information provided in English and Spanish?*

ISSUE F4: *Who files the largest number of complaints (public, etc.)? Does there appear to be a disproportionate amount coming from licensees for a particular violation (such as unlicensed activity)? Is there a lack of self-reporting by licensees or appropriate organizations/agencies? Has the board done anything to encourage reporting of violations?*

ISSUE F5: *Is the complaint process easy for the consumer to use and understand? Are the complaints (forms and accompanying documentation) accurate? [Accurately describes nature of complaint, alleged violations, etc.]*

ISSUE F6: *Is the consumer kept apprised of the progress of a complaint once filed against the licensee?*

ISSUE F7: *What action does the board take if it receives ongoing complaints about particular abuses?*

ISSUE F8: *Is complaint information disclosed to the public?*

G. Enforcement Process

Unlicensed Activity

ISSUE G1: *Is the practice of the profession/trade clearly defined so as to determine what is licensed versus unlicensed activity?*

ISSUE G2: *Has the board implemented “cite and fine” authority under Sections 145 through 149 of the Business and Professions Code?*

ISSUE G3: *What action has the board taken against unlicensed activity over the past four years?*

Investigations

ISSUE G4: *How many investigations have been commenced and completed for each year over the past four years, and how many are currently open/pending? What has been the time frame for these investigations? Has there been a decrease or increase in the time frames for the handling of investigations? Any backlog or reduction of outstanding investigation cases?*

ISSUE G5: *Does the board perform inspections and/or audits of licensees or their place of business, and if so, how often over the past four years?*

ISSUE G6: *Are investigations, inspections and/or audits handled in both an expeditious and appropriate manner by the board, either through use of their own investigative staff or use of the Department’s Division of Investigation? How accurate are the initial and subsequent decisions on investigations?*

ISSUE G7: *How many investigations have been closed in lieu of disciplinary action over the past four years?*

Disciplinary Action

ISSUE G8: *Has the board implemented “cite and fine” authority under Section 125.9 of the Business and Professions? If so, what action has the board taken over the past four years?*

ISSUE G9: *What other compliance actions have been used by the board in lieu of disciplinary action over the past four years (i.e., letters of warning, alternative dispute resolution, agreements (stipulations)? Are too many cases being handled informally, or through compliance actions where further disciplinary action should be taken?*

ISSUE G10: *Does the board make use of interim orders suspending or imposing restrictions on licensees, or other forms of injunctive relief to enjoin acts or practices of persons who are in violation of any of the provisions of the licensing act? If so, how often have these forms of relief been sought and issued over the past four years?*

ISSUE G11: *Are grounds for suspension or revocation of a license clearly defined, and is probation granted under appropriate circumstances?*

ISSUE G12: *What disciplinary action has the board taken against licensees over the past four years for unprofessional conduct or other violations of the licensing act? Is the application of sanctions or discipline imposed consistent?*

ISSUE G13: *What subsequent actions has the board taken over the past four years after a decision is reached by the Administrative Law Judge? How often have decisions been overturned by the board and the sentence imposed reduced?*

ISSUE G14: *How often has the board delayed disciplinary action awaiting court action?*

ISSUE G15: *Has the board experienced any problems in receiving information about disciplinary violations from other licensees or appropriate reporting entities?*

ISSUE G16: *What disciplinary information is disclosed to the public?*

ISSUE G17: *Does the board provide for any form of restitution to the wronged consumer or to the public?*

ISSUE G18: *Has the board developed specific criteria to evaluate the rehabilitation of a licensee after their license has been revoked?*

Disciplinary Case Aging Data

ISSUE G19: *Have there been any extreme delays in the handling of disciplinary cases over the past four years, which have been referred to the Attorney General's Office for prosecution, and to the Office of Administrative Hearings for a final disposition?*

ISSUE G20: *Has the board been able to adequately track cases through the disciplinary process?*

Enforcement Costs

ISSUE G21: *Has the board been spending too little or too much on enforcement over the past four years?*

ISSUE G22: *Has the board made the best use of its cost recovery authority?*

Other Litigation Costs

ISSUE G23: *Has the board made appropriate expenditures for lawsuits filed on their behalf or against them?*

Diversion Program (If Applicable)

ISSUE G24: *Does the diversion program of the board serve a useful purpose or is it merely being used as a way to avoid taking disciplinary action against licensees? What are the overall costs of the program as compared to its successes?*

Consumer Satisfaction Survey

ISSUE G25: *What percentage of consumers are satisfied with the way in which the board handled their complaints? (Results of Consumer Survey Conducted by the Board)*

H. Efforts to Improve the Current Regulatory Process

Operational Improvements

ISSUE H1: *Is the board's regulatory mission impeded or enhanced by existing statutes, regulations, policies, practices, or any other circumstances, including budgetary, resource, and personnel matters?*

ISSUE H2: *Are there administrative or regulatory changes that the board is considering to improve its operations and increase the program's ability to operate more in the public interest?*

Legislative Efforts

ISSUE H3: *What recent legislative efforts has the board made, or considering, to improve any aspect of the current regulatory program?*

ISSUE H4: *Has the board recently adopted or is it proposing any new licensing or occupational category for licensure?*

PART 2.

ASSESSMENT OF NEED TO REGULATE

ISSUE 1: *Is there sufficient evidence that the unregulated practice of this occupation could endanger the health, safety or welfare of the public and cause significant public harm?*

(Are practitioners engaged in activities or practices that could cause public harm? How severe? How likely that will occur? To what extent do these incompetent activities or practices cause public harm? Does one area of practice have greater harm than another?)

ISSUE 2: *Do practitioners make judgments with potentially major financial, health, safety or other significant consequences for the consumers where public harm could result?*

ISSUE 3: *Do the judgments made by these practitioners require a high degree of skill or knowledge?*

ISSUE 4: *Are these judgments independent of oversight or supervision by another person or group?*

ISSUE 5: *Is there a generally accepted core amount of knowledge, skill and ability that the practitioner must have to meet minimum competency requirements, and are indicators of competent practice measurable by objective, written standards?*

ISSUE 6: *Are there other ways in which knowledge, skills and abilities necessary for this occupation are obtained, such as apprenticeships, internships, on-the-job training, individual study, etc.?*

ISSUE 7: *Is there significant public demand for some level of regulation of this occupation?*

(What groups, organizations or persons have demanded? Are there any that are opposed?)

ISSUE 8: *Are there federal mandates or other legal considerations that require the State to continue regulating this occupation?*

ISSUE 9: *Do components of the current regulatory program provide protections to the consumer and preclude consumer harm?*

(How does the current regulatory program protect the consumer? Is there a consensus on what activities constitute competent practice so as to preclude consumer harm?)

ISSUE 10: *Are there other ways in which the consumer could control their exposure to the risk of harm that could be caused by incompetent or negligent practice?*

(Are there other legal or administrative remedies available to redress consumer harm? Would monetary damages suffice?)

ISSUE 11: *Is it difficult for the consumer of the services to pick a qualified practitioner?*

(Use service repeatedly or infrequently? Is the consumer more sophisticated than the average public in requesting these services? Can the consumer readily evaluate the performance of the practitioner? Would marketplace factors suffice?)

ISSUE 12: *What degree of overlap is there with other public agencies which may regulate this occupation?*

(Other public agencies, state or local, which regulate some portion of services provided by occupation? What percentage of licensees may another agency (or board) license?)

ISSUE 13: *Are there other states in which this occupation is regulated?*

(What states currently regulate this occupation and which ones do not? Are there some that have deregulated this occupation? Is there any evidence of consumer harm in those states that do not regulate this occupation?)

ISSUE 14: *Is regulation of this occupation justified in light of the economic and social impact which the regulatory program has on the consumer?*

(What impact does the regulatory program have on costs to the consumer and possible state business and technological growth in California? Would there be substantial savings to the consumer if the current regulatory program were eliminated? What is the net benefit to the consumer in light of the costs to the consumer?)

ISSUE 15: *Is this occupation clearly distinguishable from other professions which are already regulated?*

(Is there a high degree of overlap with currently regulated occupations, or occupational functions are clearly different from those of currently regulated occupations? Do non-regulated groups perform critical functions that are similar to this occupation's practice?)

ISSUE 16: *Are there alternatives to the current regulatory program that would have less impact and still protect the consumer?*

(What other regulatory alternatives are available [transfer to DCA, public or private certification or registration, title act only] and which occupations are currently regulated in that fashion? What are the pros and cons of each?)